

Assembly Bill No. 361

CHAPTER 295

An act to amend Section 1189 of the Civil Code, to amend Section 8225 of, and to add Sections 8214.8 and 8228.1 to, the Government Code, and to amend Section 470 of the Penal Code, relating to notaries public.

[Approved by Governor September 22, 2005. Filed with Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 361, Sharon Runner. Notaries public.

Existing law generally sets forth the procedures for proof and acknowledgment of instruments executed before notaries public and prescribes administrative penalties and civil fines for violation of provisions that govern notaries public.

This bill would make it a misdemeanor for a notary public to willfully fail to perform the required duties of a notary public or to willfully fail to keep the seal of the notary under his or her direct and exclusive control. The bill would require a court to revoke the commission of a notary public, upon conviction of any offense related to his or her duties, or of any felony and would require surrender to the court of the seal of the notary public, which would then be forwarded to the Secretary of State. The bill would make other related changes. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1189 of the Civil Code is amended to read:

1189. (a) Any certificate of acknowledgment taken within this state shall be in the following form:

State of California)
County of _____)

On _____ before me,
(here insert name and title of the
officer), personally appeared _____,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

(b) Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made.

(c) On documents to be filed in another state or jurisdiction of the United States, a California notary public may complete any acknowledgment form as may be required in that other state or jurisdiction on a document, provided the form does not require the notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law.

(d) An acknowledgment provided prior to January 1, 1993, and conforming to applicable provisions of former Sections 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335 of the Statutes of 1990, shall have the same force and effect as if those sections had not been repealed.

SEC. 2. Section 8214.8 is added to the Government Code, to read:

8214.8. Upon conviction of any offense in this chapter, or of Section 6203, or of any felony, of a person commissioned as a notary public, in addition to any other penalty, the court shall revoke the commission of the notary public, and shall require the notary public to surrender to the court the seal of the notary public. The court shall forward the seal, together with a certified copy of the judgment of conviction, to the Secretary of State.

SEC. 3. Section 8225 of the Government Code is amended to read:

8225. (a) Any person who solicits, coerces, or in any manner influences a notary public to perform an improper notarial act knowing that act to be an improper notarial act, including any act required of a notary public under Section 8206, shall be guilty of a misdemeanor.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

SEC. 4. Section 8228.1 is added to the Government Code, to read:

8228.1. (a) Any notary public who willfully fails to perform any duty required of a notary public under Section 8206, or who willfully fails to keep the seal of the notary public under the direct and exclusive control of the notary public, or who surrenders the seal of the notary public to any

person not otherwise authorized by law to possess the seal of the notary, shall be guilty of a misdemeanor.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

SEC. 5. Section 470 of the Penal Code is amended to read:

470. (a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

(e) Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any forged bill or note, it is not necessary to prove the incorporation of the bank or company by the charter or act of incorporation, but it may be proved by general reputation;

and persons of skill are competent witnesses to prove that the bill or note is forged or counterfeited.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.